



SUMMONS AND TEMPORARY RESTRAINING ORDER	DOCKET NUMBER 1872CV00455	Trial Court of Massachusetts The Superior Court 
CASE NAME: Darrell Thomas vs. Massachusetts Department of Housing & Community Development		Scott W. Nickerson, Clerk of Court Barnstable County
TO: Massachusetts Department of Housing & Community Development		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630
<p>To the above named defendant(s):</p> <p>You are hereby summoned and required to serve upon, plaintiff's attorney:</p> <p style="padding-left: 100px;"> Darrell Thomas 1167 Phinney's Lane #7 Centerville, MA 02632 </p> <p>an answer to the complaint/3rd party complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint/3rd party complaint. You are also required to file your answer to the complaint/3rd party complaint in the office of Clerk of this Court at Barnstable either before service upon plaintiff's attorney or within a reasonable time thereafter.</p> <p>Unless otherwise provided by Rule13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.</p> <p>WE ALSO NOTIFY YOU that application has been made in said action for a Temporary Restraining Order. A hearing will be held at the court house on:</p> <p style="text-align: center;"> Date: 08/30/2018 Time: 02:00 PM Session: Second Session Session Location: Barnstable County Superior Court </p> <p>at which time you may appear and show cause why such application should not be granted. In the meantime, until such hearing, WE COMMAND YOU, Massachusetts Department of Housing & Community Development and your agents, attorneys and counselors, and each and every one of them:</p> <p>Defendant is enjoined from removing Plaintiff and any family members from the shelter located at 1167 Phinney's Lane Apt 7A, Centerville, MA. 02632, returnable 8/30/18 @ 2:00 p.m.</p>		
DATE ISSUED 08/21/2018	ASSOCIATE JUSTICE Hon. Robert C Rufo	ASSISTANT CLERK <i>X Christine M. Hignett</i>
		SESSION PHONE# (508)375-6684

SUMMONS AND TEMPORARY RESTRAINING ORDER	DOCKET NUMBER 1872CV00455	Trial Court of Massachusetts The Superior Court	
CASE NAME: Darrell Thomas vs. Massachusetts Department of Housing & Community Development		Scott W. Nickerson, Clerk of Court Barnstable County	
Massachusetts Department of Housing & Community Development		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630	

the above named defendant(s):

You are hereby summoned and required to serve upon, plaintiff's attorney:

Darrell Thomas
1167 Phinney's Lane #7
Centerville, MA 02632

answer to the complaint/3rd party complaint which is herewith served upon you, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint/3rd party complaint. You are also required to file your answer to the complaint/3rd party complaint in the office of Clerk of this Court at Barnstable either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

WE ALSO NOTIFY YOU that application has been made in said action for a Temporary Restraining Order. A hearing will be held at the court house on:

Date: 08/30/2018

Time: 02:00 PM

Session: Second Session

Session Location: Barnstable County Superior Court

at which time you may appear and show cause why such application should not be granted. In the meantime, until such hearing, **WE COMMAND YOU**, Massachusetts Department of Housing & Community Development and your agents, attorneys and counselors, and each and every one of them:

Defendant is enjoined from removing Plaintiff and any family members from the shelter located at 1167 Phinney's Lane Apt 7A, Centerville, MA. 02632, returnable 8/30/18 @ 2:00 p.m.

For Attorney General

A true copy, Attest:

Thomas J. Perrino
1st DEPT

Clerk

DATE ISSUED 08/21/2018	ASSOCIATED JUDGE Hon. Robert C Rufo	ASSISTANT CLERK <i>Christine M. Hignall</i>	SESSION PHONE# (508)375-6684
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CIVIL TRACKING ORDER
(STANDING ORDER 1- 88)

DOCKET NUMBER
1872CV00455

**Trial Court of Massachusetts
The Superior Court**



NAME
Darrell Thomas vs. Massachusetts Department of Housing & Community
Development

Scott W. Nickerson, Clerk of Court
Barnstable County

File Copy

COURT NAME & ADDRESS
Barnstable County Superior Court
3195 Main Street
Barnstable, MA 02630

TRACKING ORDER - X - Accelerated

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		11/19/2018	
Response to the complaint filed (also see MRCP 12)		08/21/2019	
All motions under MRCP 12, 19, and 20			
All motions under MRCP 15			
All discovery requests and depositions served and non-expert depositions completed			
All motions under MRCP 56			
Final pre-trial conference held and/or firm trial date set			
Case shall be resolved and judgment shall issue by			

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.
Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.
This case is assigned to

DATE ISSUED

08/21/2018

ASSISTANT CLERK

Scott W Nickerson

PHONE

(508)375-6684

COMMONWEALTH OF MASSACHUSETTS

Barnstable, SS.

Superior COURT

Docket No.

1872CV455

Dorrell Thomas
PLAINTIFF

v.

D.C.H.D.
DEFENDANT

SUPERIOR COURT
BARNSTABLE, SS

FILED AUG 21 2018

Motion for

TO issue:
defendant is enjoined
from removing plaintiffs
and any of plaintiffs family
from the Phinney house
at 1167 Phinney Lane
Apt 7A, Centerville MA
returnable 8/30/18
C 20M
Ryo & Haller

Plaintiff requesting the court enjoin defendant, D.H.C.D From evicting plaintiff and his children from emergency shelter SCATTERED SITE. The accompanying Affidavit sets out the emergency NATURE of this motion.

Dated: 8-21-18

Respectfully submitted,

Dorrell Thomas
Dorrell Thomas
1167 Phinney's Ln
CENTERVILLE MA

Affidavit of

Darrell Thomas

I have been living @ SCATTERED Shelter SITE SINCE Sept 2017
I have 2 children ages 19 & 12. I am being asked to
LEAVE on Thursday Aug 23 @ 9AM with no place to go
and my children RETURNING to school AUG 29, 2018.

REASONS for asking to LEAVE WAS OVER INCOME THAT
I ^{sic} (K) no longer make and physical limitations that
were stated back in Sept 2017

Signed this 21st day of AUGUST, 2018 under pains and penalty of perjury.

Darrell Thomas

Darrell Thomas



Affidavit of

Jerrell Thomas

Asking the court for AN Emergency Hearing
DUE to being ASKED TO LEAVE emergency shelter
IN 48 hrs with A family & nowhere to go.

Signed this 21 day of AUG, 2018 under pains and penalty of perjury.

Jerrell Thomas

LIVING AT
SINCE



18CV00455

18

CIVIL ACTION COVER SHEET		DOCKET NUMBER <u>1872CV455</u>	Trial Court of Massachusetts The Superior Court
PLAINTIFF(S): <u>DARRELL THOMAS</u>		COUNTY	
ADDRESS: <u>1167 PHILLIPS LN</u> <u>CENTERVILLE MA</u>		DEFENDANT(S): <u>MA. DEPT. OF HOUSING & COMMUNITY DEVELOPMENT</u>	
ATTORNEY:		ADDRESS:	
ADDRESS:		ADDRESS:	
BBO		<div style="border: 2px solid red; padding: 5px; text-align: center;"> SUPERIOR COURT BARNSTABLE, SS FILED AUG 21 2018 <i>Shirley H. Clark</i> </div>	
TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)			
CODE NO. <u>E02</u>	TYPE OF ACTION (specify)	TRACK	HAS A JURY CLAIM BEEN MADE? <input type="checkbox"/> YES <input type="checkbox"/> NO
If "Other" please describe: _____			
STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A			
The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.			
TORT CLAIMS (attach additional sheets as necessary)			
Documented medical expenses to date:			
1. Total hospital expenses			\$ _____
2. Total doctor expenses			\$ _____
3. Total chiropractic expenses			\$ _____
4. Total physical therapy expenses			\$ _____
5. Total other expenses (describe below)			\$ _____
Subtotal (A):			\$ _____
Documented lost wages and compensation to date			\$ _____
Documented property damages to date			\$ _____
Reasonably anticipated future medical and hospital expenses			\$ _____
Reasonably anticipated lost wages			\$ _____
Other documented items of damages (describe below)			\$ _____
Briefly describe plaintiff's injury, including the nature and extent of injury:			
TOTAL (A-F):			\$ _____
CONTRACT CLAIMS (attach additional sheets as necessary)			
Provide a detailed description of claims(s):			
TOTAL:			\$ _____
Signature of Attorney/Pro Se Plaintiff: <u>Darrell Thomas</u>		Date: _____	
RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.			
CERTIFICATION PURSUANT TO SJC RULE 1:18			
I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.			
Signature of Attorney of Record: X		Date: _____	



18CV00455

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT
BARNSTABLE, SS
FILED AUG 21 2018
Scott H. Wilson Clerk

Barnstable, ss

SUPERIOR COURT
NO. 1872CV455

Darrell Thomas
Plaintiff

vs.
MASSACHUSETTS DEPT. of housing & Community Development
Defendant

COMPLAINT FOR JUDICIAL REVIEW

This is a complaint seeking judicial review pursuant to G.L. ch. 30A, s.14.

Plaintiff Darrell Thomas is a resident in the Commonwealth of
Massachusetts and lives at 1167 Phinney's LN Centerville MA (Scattered Shelter sites)
Defendant _____ with a principal place of business at _____

Defendant is an agency DHCD having its principal office at
MA Dept. of Housing & Community Development

Plaintiff is aggrieved by a decision of defendant DHCD denying plaintiff's
EMERGENCY SHELTER

A memorandum of the DHCD decision was filed in the Office of the _____
on 8-13, 20 18.

Plaintiff's appeal is based on an assertion that defendant DHCD finding was
(check the applicable section and write an explanation in the blank lines following):

- a. not supported by substantial evidence because _____

- b. contrary to law because _____

- c. in excess of its authority because _____
- d. based on unlawful procedure because _____
- e. in violation of constitutional standards because _____

f. OTHER: UPON SHELTER INTAKE STAFF WAS INFORMED ABOUT MEDICAL
 CONDITION AND TRUE WORKING HOURS WERE NOT INDICATIVE OF PAY STUBS. AS A NEW
 EMPLOYEE, I FILLED IN FOR VACATIONS, SICK TIME, AND LACK OF HIRED STAFF. MY PAY
 DUTY DECLINED TO THE POINT I NOW WORK 15 HRS PER WEEK. I ALSO (PHYSICALLY)
 INFORMED STAFF OF PHYSICAL CONDITIONS SUCH AS FIBROMYALGIA, ASTHMA, LYME DISEASE
 I TAKE MEDICATION AND USE OF MACHINERY @ NIGHT TO SLEEP

WHEREFORE, plaintiff requests the following relief (fill in) Ability to remain in
 agency shelter until adequate housing is found and employment improves OR,
 the very least extend deadlines till hearing process is exhausted.

Name: DORRELL THOMAS

Address: 1167 PHIMNEY'S LN

Telephone: 508 963-7693

Signed under the pains and penalty of perjury.

Dorrell Thomas

Dated: 8-21, 20 18.

NOTIFY (1) GOVERNMENT BUREAU (DEPT. OF ATTY. GENERAL); (2) THE BOARD OF APPEAL, AND (3) ANY OTHER PARTY TO THE APPEAL
 (IN ACCORDANCE WITH G.L. CHAPTER 30A, SECTION 14 AND THE MASSACHUSETTS RULES OF CIVIL PROCEDURE GOVERNING SERVICE OF
 PROCESS.)



**Massachusetts Department of
Housing and Community Development
Division of Housing Stabilization
100 Cambridge St., 4th Fl.
Boston, MA 02114**

Date: August 17, 2018

Dear Mr. Darrell Thomas

On August 17, 2018, this office implemented your Fair Hearing Decision of August 13, 2018, in the following manner: The DHCD Hearings Division denied your Emergency Assistance (EA) termination appeal (18-0714). Therefore, all members of your household must leave EA shelter at 1167 Phinney Lane, Apt. 7A, Centerville, MA 02632, by August 23, 2018 at 9:00 a.m. Enclosed please find a copy of the hearing decision, a language assistance document, and a list of resources.

Very truly yours,


DHS Homeless Coordinator
JOSEPH T. THOMAS



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Janelle L. Chan, Undersecretary

**DIVISION OF HEARINGS
EMERGENCY SHELTER**

DECISION OF DHCD

Case No.:	18- 0714
Appellant's Name and Address	Darrell Thomas 1167 Phinney Lane Apt. 7A Centerville, MA 02632
SS No.:	XXX-XX - 5612
Place of Hearing:	Hyannis DHCD Office
Hearings Officer:	Carla Sauvignon
Reason for appeal:	The Appellant was terminated because his EA household's monthly income is above the maximum income limit.
Present at the hearing:	Darrell Thomas – Appellant Amber Noyes – Dept. Representative/Homeless Appeals Specialist

PROCEDURAL HISTORY

Filing date: 6-15-18	Hearing date: 7-13-18	Decision date: 8-13-18
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FACTS

After review of all the testimony presented and evidence submitted in this case, I find the following facts:

On 12/21/17, the Department issued to the Appellant an Emergency Assistance (EA) Six Month Notice informing him that his EA shelter benefits are scheduled to end on 6/20/18 because his



EA household's monthly income exceeded the maximum income limit of his household. *Exhibit 1*.

The EA Six Month Notice stated:

"This notice is to inform you that a recent review of your family's income shows that your monthly gross income of \$2,969.33 exceeds the EA Eligibility Standard of \$1,556.00 for a family of your size "

On 6/15/18, the Appellant filed an appeal of the EA Six Month Notice. *Exhibit 2*

A hearing was conducted on 7/13/18 at the Hyannis DHCD Office.

At the Hearing, the Department representative testified that on 10/16/17, the Appellant was found eligible for EA shelter and placed into shelter at the HAC Shelter/Cataumet with 1 child. The Department representative testified that the Appellant signed the DHCD shelter rules when he was placed.

The Department representative testified that on 12/21/17, the Appellant was issued an EA Six Month Notice stating that his EA shelter benefits would come to an end on 6/20/18 because his EA household's gross monthly income totaling \$2,969.33 exceeded the maximum guidelines for a household of 2, which is \$1,556.00. The Department representative testified that as part of an income review, the gross monthly earnings for the Appellant's household were reviewed by DHCD as required per EA shelter regulations. The Department representative testified that the Appellant submitted biweekly paystubs from his employer Maplewood Senior Living dated 11/10/17 and 11/24/17 which showed gross earnings in the amount of \$1,381.50 and \$1,359.00.

The Department representative testified that the paystubs were added together and the gross amount totaled \$2,740.50. The Department representative testified that per EA regulations, the gross amount is then divided by 2 to get the average weekly pay which was then multiplied by 2.167 per federal guidelines. The Department representative testified that the Appellant's gross monthly amount for the month of November was calculated to be \$2,969.33. The Department representative testified that the maximum monthly earnings that a household of 2 could earn to remain eligible for the EA shelter program was \$1,556.00, therefore, the Appellant was over-income.

The Department representative testified that once an EA family's income is examined and found to be over the maximum limit for their household, the income will not be reevaluated. The Department representative testified that once the EA household's income is found to be over the maximum limit, the family is subject to termination and in this case a Six Month Notice was issued. The Department representative testified that on 12/21/17, the Department properly issued an EA Six Month Notice where the Appellant's gross monthly income exceeded the EA Eligibility Standards. The Department

representative testified that the Appellant would not be immediately terminated from the EA shelter program per the Six Month Notice but had until 6/20/18 to exit shelter.¹

The Department representative testified that the Appellant appealed the EA Six Month Notice.

The Appellant questioned the Department representative after she presented the Department's case. The Appellant asked the Department representative how much was the amount that he was over income for the EA shelter program. The Department representative testified that after calculating the Appellant's 2 pay statements submitted for the month of November, the Appellant was over-income by \$1,413.33.

The Appellant did not have any more questions for the Department representative.

To support her testimony, the Department representative submitted the following documents:

- (1) EA Six Month Notice, dated 12/21/17, *Exhibit 1*,
- (2) Appeal Request, dated 6/22/18, *Exhibit 2*,
- (3) EA Income Calculation showing gross earned income (\$2,969.33), total monthly gross income (\$2,969.33), EA eligibility standard for a household size of 2 (\$1,556.00) and income above the EA eligibility standard (\$1,413.33), *Exhibit 3*,
- (4) Eligibility Explorer of the Appellant's biographical info and current address, *Exhibit 4*,
- (5) Review edit assessment for the Appellant, dated 10/12/17, *Exhibit 5*,
- (6) the Appellant's Monthly Income Calculation, *Exhibit 6*;
- (7) Housing Stabilization Notice 2017-01, Implementation of Increase in the Federal Poverty Guidelines effective January 24, 2017, *Exhibit 7*;
- (8) Paystubs from Maplewood Senior Living for the Appellant, pay date 11/24/17 (\$1,359.00), and advice date 11/10/17 (\$1,381.50), *Exhibit 8*;
- (9) DHCD regulation 760 CMR 67.02 (5) regarding gross monthly eligibility, *Exhibit 9*;
- (10) Notice to EA Families placed in hotels/motels signed by the Appellant, dated 10/16/17, *Exhibit 10*,
- (11) Client Responsibilities signed by the Appellant, dated 10/16/17, *Exhibit 11*,

¹ The Appellant appealed the Notice on 6/15/18, near the exit date from EA shelter but is currently, still in EA shelter pending the decision on his appeal

- (12) Summary of EA Uniform Shelter Program Rules as revised in January 2015 initialed by the Appellant, *Exhibit 12*,
- (13) Rehousing Plan signed by the Appellant, dated 10/16/17, *Exhibit 13*;
- (14) Uniform Shelter Program Rules, *Exhibit 14*,
- (15) Receipts of New Uniform Shelter Rules signed by the Appellant, dated 10/16/17, *Exhibit 15*;
- (16) DHCD Rights documents signed by the Appellant, dated 10/16/17, *Exhibit 16*;
- (17) Your Rights to Know initialed by the Appellant, *Exhibit 17*; and
- (18) DHCD Do You Have a Disability? Signed by the Appellant, dated 10/16/17, *Exhibit 18*

At the Hearing, the Appellant stated that during the application intake for the EA shelter program, he informed DHCD about all of his personal information including employment. He stated that when he applied for EA shelter, he was unemployed. He stated that he had been evicted from his apartment in September and was spending nights with his son, who is now 12 years old, in his car. He stated that his son's mother is in alcoholic and not in the picture. He stated that he just started working at Maplewood maybe a couple of days before he was placed into EA shelter.

The Appellant stated that he uses a Cpap machine and carries around a portable breathing machine in a backpack. The Appellant pointed to a backpack that he entered the hearing room with.

The Appellant stated that in December when he had only been in EA shelter for a few weeks, he received his mail and went straight to his unit. He stated that he only had a small lamp in his room and could not see what the letter was about. He stated that the letter he received in the mail was important so he brought it down to shelter staff because he had difficulty reading it. He stated that shelter staff informed him that he received a Six Month Termination Notice. He stated that he was informed that he was over-income for the program and would have to exit EA shelter in 6 months. He stated that shelter staff informed him that they would work with him to obtain housing within that time period.

The Appellant stated that he was transferred to another EA shelter on Phinney Lane in Centerville after receiving the Six Month Termination Notice. He stated that when he did the intake at the new EA shelter, the case worker assigned to him was a former coworker from HAC. He stated that prior to entering EA shelter, he had worked in housing and knew the individual who was his new case worker. He stated that it was his former coworker who asked him if he had appealed the Six Month Termination Notice. He stated that he didn't realize that he could appeal. He stated that he thought the

Termination Notice was cut and dry. He stated that he contacted Laurel Fuller from DHCD and left a voicemail message regarding the Six Month Notice. He stated that she did not call him back but that she called his case manager. He stated that he contacted the Hearings Division requesting a late appeal and it was granted. He stated that he is still in shelter pending the decision on his appeal.

The Appellant stated that he no longer works at Maplewood and that his current job is with 10 Pin Bowling. He stated that when he worked at Maplewood, he was promised 40 hours a week but only worked 30 hours a week. He stated that he worked per diem. He stated that there were employees on vacation and that he was asked to pick up more shifts. He stated that he did more shifts and informed his case worker. He stated that he took on more shifts so that he could save more and look for housing. He stated that his work hours were then dropped to 25 hours a week. He stated that he left Maplewood due to a conflict with the administrator. He stated that he left Maplewood and started working with 10 Pin Bowling with the promise that he would be able to work 40 hours a week or close to that. He stated that 10 Pin Bowling opened up in April and the owners did not know if the new business would be successful. He stated that currently, he is only working 15 hours per week at 10 Pin Bowling. He stated that he spoke to the manager about working more hours but was told that would not be the case due to business not taking off. He stated that he kept his case worker aware of his employment and also what his hours were.

The Appellant stated that he has experienced a drop in salary due to less hours at Maplewood and then at 10 Pin Bowling. He stated that he has also had to change his hours at work to coincide with his son's school bus schedule. He stated that he is looking for more work. He stated that rents in the area are high and he does not currently make enough money to move out of shelter. He stated that he did not tell his son when he received the Six Month Notice because it was a stressful situation. He stated that he does not want to put his son in a situation like prior when they slept in their car.

The Appellant stated that he is grateful for EA shelter but that he should not have gotten a Six Month Notice of Termination. He stated that the gross income he made in his biweekly paystubs submitted in November did not accurately represent his true income where he had taken on extra shifts and experienced a drop in work hours. He stated that if he was aware of the DHCD guidelines regarding being over-income, he would not have taken on the extra shifts. He stated that any extra money that he made would help him with his savings.

The Department representative testified that the Department reviews gross income earnings of EA residents per an income review and also as part of their rehousing plans. The Department representative testified that the Appellant signed the shelter rules of DHCD when he entered EA shelter and signed his rehousing plan, therefore he knew that his income would be reviewed and knew that he risked being terminated if found over-income for the EA shelter program.

The Appellant stated that his rehousing plan was made after he was working. He stated that he did not meet his case worker for a while after entering EA shelter and did not have his first rehousing meeting until he had been in shelter for a few weeks. He stated that had he known, he would have stayed within the guidelines of maintaining shelter eligibility. He stated that if he maintained the same hours as the 2 paystubs indicated, he would have been able to rent a place but that was not the case. He stated that he does not have a car and does his housing search online. He stated that rents in the area were around \$1,300 - \$1,800 per month. He stated that he would not have put his family in jeopardy if he knew that taking the extra shifts at Maplewood would put him over-income.

The Department representative testified that during an income review of the Appellant's earnings, the Appellant's income put him over the maximum income limit for the EA program. The Department representative testified that DHCD does not base its decision regarding income earnings on future earnings but only on the recent paystubs which were submitted by the Appellant during an income review. The Department representative testified that an EA resident's income will not be reevaluated unless there are extraordinary circumstances. The Department representative testified that a loss of income alone is not considered extraordinary circumstances.

The Appellant asked that he be considered for extraordinary circumstances due to his not understanding that his income could make him ineligible and that his work hours were not an accurate picture on the 2 paystubs submitted where he had picked up extra shifts. He stated that he and his son see a therapist for mental health issues. He stated that he also has a physical issues. He stated that he has not told his son about the termination for fear that his son would break down.

This Hearings Officer left the record open until 7/18/18 for the Appellant to submit any relevant evidence to this appeal.²

To support his testimony, the Appellant submitted the following documents after the hearing:

- (1) Fax Coversheet written by the Appellant stated that his son's therapist is out until 8/23/18 but his case worker can submit a notice confirming that his son sees a therapist, dated 7/18/18, *Exhibit A*, and
- (2) Letter from Steven Lacy, MD from HCHC-H Special Services stating that the Appellant is a patient, dated 6/14/18, *Exhibit B*

DISCUSSION

Regulations appearing at 760 CMR 67.02(5)(a) provides in pertinent part:

² The Appellant contacted the Hearings Division requesting more time to send in documents confirming that he and his son see therapists. This Hearings Officer allowed the record to remain open until 7/23/18. The Appellant did not submit anymore documents.

1. The household must meet the gross monthly eligibility standards that are based on household size and are adjusted annually based on 115% of the Federal Poverty Level. These standards are posted at www.mass.gov/dta and viewed by selecting the Program Eligibility Charts and Tables link under Key Resources.

EA benefits will be denied if the applicant household's monthly gross income exceeds the EA eligibility standard for a household of that size. 760 CMR 67 02(5)(c)

I find the Department representative's testimony supported by the evidence submitted that the Appellant received and signed for all standard intake documents stating the rules, responsibilities and consequences of noncompliance with the DHCD EA shelter program. (*See Exhibits 10-15 which were signed by the Appellant on 10/16/17*)

In this case, I find that the Appellant's household at the time of the income review while in EA shelter, included himself and his son, a household of 2. I find that pursuant to the EA shelter regulations, the maximum monthly income eligibility standard for a household of 2 is \$1,556.00. I find that after review of the Appellant's household gross monthly income for the month of November from biweekly paystubs from his former employment with Maplewood Senior Living, the Appellant's EA household was found to have a gross monthly amount of \$2,969.33. Based on the calculations, the Department issued a Six Month Notice because the Appellant was ineligible for EA shelter because he was over-income and effective 6/20/18, the Appellant's shelter benefits will end.

The Appellant argued that a Six Month Notice should not have issued where the income earned that was calculated by the Department was not the same income the Appellant earned subsequently where his hours at Maplewood lessened, he left Maplewood and began work at 10 Pin Bowling where his hours were not close to the 40 hours promised but was in fact 15 hours a week. The Appellant argued that he was unaware of the EA shelter program's income review process for eligibility purposes and had he known, he would not have taken the extra shifts at Maplewood which increased his earnings on the 2 checks that were submitted to DHCD. Finally, the Appellant also argued that he and his son suffer from mental health issues, that he has physical ailments and that these issues should be taken into consideration and he be found to have extraordinary circumstances enabling him to stay in EA shelter.

The Appellant's statement that he and his son suffer from mental health issues and physical disabilities is not in dispute, rather, the sole basis of receiving the 6 Month Termination was the calculation of gross monthly earnings of the Appellant's EA household for the Appellant's Household. The Appellant testified that he was unaware of the EA shelter program's policy of reviewing income for eligibility purposes and did not have a rehousing meeting until weeks after he had been placed into shelter. However, the EA shelter program rules are clearly stated in the forms that the Appellant signed on 10/16/17 when he was placed into shelter including the Client Responsibilities While in a Temporary Emergency Shelter which states in pertinent part: "Your temporary emergency shelter benefits will be terminated if: your gross monthly income exceeds the EA Eligibility" which the Appellant also initialed. Moreover, income reviews of EA residents are routinely conducted and are also reviewed as part of an EA resident's monthly rehousing plan. While the Appellant had only been in shelter for a short time, the Department

was not prevented from reviewing the Appellant's gross monthly earnings for the month of the November when the Appellant was employed and a resident in an EA shelter.

Therefore, I find that the calculation by the Department at the time of the income review from biweekly paystubs that the Appellant submitted was proper per EA regulations. EA regulations at 760 CMR 67.02 (5)(f), provides in pertinent part: "Once the EA household's income exceeds the EA eligibility standard the income will not be reevaluated to determine EA eligibility." Further, the regulations provides in pertinent part: "In extraordinary circumstances, the Associate Director or his or her designee may extend EA benefits beyond the six-month period. Extraordinary circumstances will be determined by the Department on a case-by-case basis. The loss of income alone will not constitute extraordinary circumstances. Verification substantiating the extraordinary circumstances must be submitted by the EA household." Therefore, subsequent earned income by the Appellant is not reevaluated. In this case, the Appellant's argument that the paystubs did not reflect an accurate gross income where he had taken on extra shifts and no longer worked at the same place after the review was done is not enough for a reevaluation of income to occur and does not constitute extraordinary circumstances per EA shelter rules.

Based on the testimony and evidence submitted, I find that the monthly gross income for the Appellant's household of 2, at the time the Department reviewed his household's monthly income, was \$2,969.33. That amount was over the amount of \$1,556.00, the maximum gross monthly earnings that the Appellant's EA Household could earn to remain eligible for the EA shelter program. Therefore, I find that the Department properly issued a Six Month Notice to the Appellant on 12/21/17.

DECISION

This Appellant's Appeal of the Notice of Termination issued on 12/21/17 is DENIED.

JUDICIAL REVIEW

If the appellant is dissatisfied with the final decision of the hearing officer, s/he may exercise the right of judicial review in accordance with M.G.L. c.30A §14 by filing a complaint with the Superior Court or Housing Court in the county where s/he resides or has a principal place of business, or in Suffolk Superior Court within 30 days after receipt of this decision.

August 13, 2018

Date

Carla Sauvignon, Esq.

Carla Sauvignon, Esq.,
Hearings Officer

Tanya
Reynolds
@ 9:45 am
Tue/21